

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 GANN PROPERTIES, L.P.,

11 Plaintiff,

12 v.

13 JUDAN COATS, et al.,

14 Defendants.

Case No.: 13-cv-3718 JSC

15 **ORDER REASSIGNING CASE;  
RECOMMENDATION TO GRANT  
PLAINTIFF'S MOTION TO REMAND  
AND DENY PLAINTIFF'S REQUEST  
FOR ATTORNEY'S FEES (Dkt. No. 6)**

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17 Now pending before the Court is Plaintiff Gann Properties, L.P.'s motion to remand. (Dkt.  
18 No. 6.) In addition to requesting a remand, Plaintiff's motion seeks attorney fees in the amount of  
19 \$750.00. A hearing was held on October 3, 2013 at which no defendant appeared. Because the  
20 undersigned magistrate judge does not have the consent of all the parties to this action pursuant to 28  
21 U.S.C. § 636, the Court ORDERS this case reassigned to a district judge. For the reasons stated  
22 below, the undersigned RECOMMENDS that the District Court GRANT Plaintiff's motion to  
23 remand and DENY Plaintiff's request for attorney's fees.

24 Plaintiff brought this state law unlawful detainer action against Defendants in the Superior  
25 Court of California for the County of Contra Costa seeking to evict Defendant Edith J. Zufall, a  
26 tenant, from real property located in Martinez.<sup>1</sup> Defendant Zufall is 92 years old. (Dkt. No. 2.)

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28 <sup>1</sup> Although the Notice of Removal describes Zufall as a "former" tenant, (Dkt. No. 1-1, p. 1), the  
address she provided to the Court as her own is the same address for the property that is in dispute in  
this action.

1 Zufall, proceeding pro se, purported to remove the action to this Court on the basis of federal  
2 question jurisdiction. Zufall has not filed an opposition to Plaintiff's motion or otherwise responded  
3 to the motion.

## 4 DISCUSSION

### 5 A. Removal

6 Zufall, as the party seeking removal to this federal court, bears the burden of establishing that  
7 subject matter jurisdiction exists, and courts strictly construe the removal statute against removal  
8 jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566-67 (9th Cir. 1992). Further, when a case is  
9 removed to federal court, the court has an independent obligation to satisfy itself that it has federal  
10 subject matter jurisdiction. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004). The  
11 Court has reviewed the Notice of Removal and has determined that subject matter jurisdiction does  
12 not exist.

13 "Federal question jurisdiction exists only when a federal question exists on the face of a  
14 well-pleaded complaint." *ING Bank, FSB v. Pineda*, No. 12-2418, 2012 WL 2077311, at \*1 (N.D.  
15 Cal. June 8, 2012). The removed complaint makes only a state law claim for unlawful detainer.  
16 (Dkt. No. 1-1, p. 8.) Zufall's Notice of Removal contends that federal question jurisdiction exists  
17 because Plaintiff's unlawful detainer claim is actually an artfully pled claim under the Protecting  
18 Tenants at Foreclosure Act ("PTFA"). 12 U.S.C. § 5220. The PTFA "provides certain protections  
19 to tenants who reside in properties subject to foreclosure," including the requirement that a 90-day  
20 notice to vacate be given to bona fide tenants. *SD Coastline LP v. Buck*, 2010 WL 4809661, at \*1-2  
21 (S.D. Cal. Nov. 19, 2010). However, Plaintiff's complaint itself is strictly an action based on the  
22 California unlawful detainer statutes, and Zufall's reference to the PTFA is best characterized as a  
23 potential defense or counterclaim. *See RWW Props., LLC v. Lucas*, 2013 WL 1876636, at \*2 (E.D.  
24 Cal. May 3, 2013) (collecting cases). However, neither a defense nor a counterclaim is considered in  
25 evaluating whether a federal question appears on the face of a plaintiff's complaint. *See ARCO*  
26 *Env'l. Remediation, LLC v. Dep't. of Health & Env'l. Quality of the State of Montana*, 213 F.3d  
27 1108, 1113 (9th Cir. 2000) (defense); *see also Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009)  
28 (counterclaim). Therefore, this Court does not have federal question jurisdiction.

1       Although the Notice of Removal does not allege jurisdiction based on diversity, the Court  
2 notes that such jurisdiction does not exist in this case. Jurisdiction founded on diversity “requires that  
3 the parties be in complete diversity and the amount in controversy exceed \$75,000.” *Matheson v.*  
4 *Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). Complete diversity means that  
5 “each of the plaintiffs must be a citizen of a different state than each of the defendants.” *Allstate Ins.*  
6 *Co. v. Hughes*, 358 F.3d 1089, 1095 (9th Cir. 2004). Zufall has not established that the parties are  
7 diverse or that the amount in controversy exceeds \$75,000. Instead, the face of the state court  
8 complaint states that the amount demanded is less than \$10,000. (Dkt. No. 1-1, p. 8.) Further, even if  
9 these requirements were met, removal would still be improper because Zufall, an apparent California  
10 resident, is precluded from removing an action where she is a citizen of the state in which the action  
11 was brought. 28 U.S.C. § 1441(b)(2).

12       **B.       Attorney’s Fees**

13       Plaintiff also requests that Zufall pay it \$750 award in attorney’s fees. Pursuant to 28 U.S.C. §  
14 1447(c), a district court has the discretion to award attorney’s fees and costs upon remand if the  
15 defendant lacked an “objectively reasonable” basis for removal. *See Martin v. Franklin Capital Corp.*  
16 546 U.S. 132, 141 (2005); *see also Patel v. Del Taco, Inc.*, 446 F.3d 996, 999 (9th Cir. 2006)  
17 (upholding fee award under § 1446(c) where the removal was “frivolous”). A pro se defendant is  
18 “entitled to more leeway in his attempt to comply with the removal statute.” *HSBC Bank USA, N.A. v.*  
19 *Bryant*, 2009 WL 3787195, at \*5 (S.D. Cal. Nov. 10, 2009). Although the Court concludes that  
20 Zufall’s removal lacked merit, it does not find that she relied on the PTFA in bad faith. Even if Zufall  
21 removed this case the day before trial was to commence in state court, this Court is not persuaded that  
22 Zufall—a 92-year-old tenant proceeding pro se—was acting without a good faith belief that she had  
23 an objectively reasonable basis for removal. Plaintiff’s fee request should be denied.

24       **CONCLUSION**

25       For the reasons stated, the undersigned RECOMMENDS that the newly assigned district  
26 judge 1) GRANT the motion and REMAND the case back to Contra Costa County Superior Court,  
27 and 2) DENY Plaintiff’s request for attorney’s fees.

1       The Court informs Zufall that she may seek assistance from, among others, Bay Area Legal  
2 Aid Contra Costa County, which can be contacted through their website (<http://baylegal.org/locations->  
3 2/contra-costa-county/) or by telephone at either (510) 250-5270 or (925) 219-3325.

4       Plaintiff shall serve a copy of this report and recommendation on Defendants within three  
5 days from the filing date of this Order and shall file a proof of service with this Court.

6       Any party may file objections to this report and recommendation with the district court judge  
7 within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b);  
8 Civil L.R. 72-3. Failure to file objections within the specified time may waive the right to appeal  
9 the District Court's ultimate Order.

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**IT IS SO ORDERED.**

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Dated: October 3, 2013

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*Jacqueline S. Corley*  
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JACQUELINE SCOTT CORLEY  
UNITED STATES MAGISTRATE JUDGE

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